

FILED

APR 10 1946

CHARLES ELMORE DROPLEY  
CLERK

*Murphy. J.*

11

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

\_\_\_\_\_  
No. 1094  
\_\_\_\_\_

*J.*

WILLIAM G. BARNES,

*Petitioner,*

*vs.*

CITY OF PHILADELPHIA

\_\_\_\_\_

PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPERIOR COURT OF THE STATE OF PENN-  
SYLVANIA AND BRIEF IN SUPPORT THEREOF.

\_\_\_\_\_

THOMAS D. McBRIDE,  
*Counsel for Petitioner.*



# INDEX

## SUBJECT INDEX

	Page
Petition for writ of certiorari .....	1
Statement of the case .....	2
Questions presented .....	6
Reasons relied upon for allowance of writ .....	7
Brief in support of petition .....	11
Jurisdiction .....	11
Argument:	
The City of Philadelphia does not have jurisdiction to tax the income of a resident of New Jersey who is employed in the Navy Yard at League Island .....	12
The penal provision of the ordinance is invalid because the police power of the City of punish offenses created by it does not extend to League Island Navy Yard .....	21

## TABLE OF CASES CITED

<i>American Railway Express Co. v. Levee</i> , 263 U. S. 19, 44 S. Ct. 11 .....	12
<i>Arlington Hotel Co. v. Fant</i> , 278 U. S. 439, 49 S. Ct. 227 .....	17
<i>Arthur v. School District of Polk Borough</i> , 164 Pa. 410, 30 A. 299 .....	19
<i>Atlantic Coast Line R. Co. v. City of Goldsboro</i> , 232 U. S. 548, 34 S. Ct. 364 .....	12
<i>Barnes v. City of Philadelphia</i> , 158 Pa. Super. 179, 44 A. (2d) 610 .....	2
<i>Boyd v. U. S.</i> , 116 U. S. 616, 6 S. Ct. 524 .....	23
<i>Boyle v. Smithman</i> , 146 Pa. 255, 23 A. 397 .....	23
<i>City v. Schaller</i> , 148 Pa. Super. 276, 25 A. (2d) 406 .....	16
<i>Dole v. Philadelphia</i> , 337 Pa. 375, 11 A. (2d) 163 .....	15
<i>Frick v. Pennsylvania</i> , 268 U. S. 473 .....	20, 24
<i>Hillman Coal and Coke Co. v. Jenner Township, Somerset County</i> , 300 Pa. 108, 150 A. 293 .....	19
<i>James v. Dravo Contracting Co.</i> , 302 U. S. 134, 58 S. Ct. 208 .....	
<i>Kiker v. City of Philadelphia</i> , 346 Pa. 624, 31 A. (2d) 289, 320 U. S. 741, 88 L. Ed. 439 .....	7, 8, 16, 17, 18

	Page
<i>Marson v. Philadelphia</i> , 342 Pa. 369, 21 A. (2d) 228 . . .	15
<i>Osborn v. First National Bank</i> , 154 Pa. 134, 26 A. 289 . . .	23
<i>Passenger Railway Co. v. Pittsburgh</i> , 226 Pa. 419, 75 A. 662 . . .	19
<i>Philadelphia v. Nell</i> , 3 Yeates 475 . . .	25
<i>Rivera v. Buscaglia</i> , 146 F. (2d) 461 . . .	21
<i>Standard Oil Co. v. California</i> , 291 U. S. 242, 54 S. Ct. 381 . . .	17
<i>Surplus Trading Co. v. Cook</i> , 281 U. S. 647, 50 S. Ct. 455 . . .	17, 18
<i>U. S. v. Allegheny County</i> , 322 U. S. 174, 64 S. Ct. 908 . . .	12
<i>U. S. v. Unzeuta</i> , 281 U. S. 138, 50 S. Ct. 284 . . .	18, 24
<i>Williams v. Bruffy</i> , 96 U. S. 176, 24 L. Ed. 716 . . .	12

## STATUTES CITED

Act of Pennsylvania Legislature of:	
March 29, 1827, P. L. 153 . . .	12
February 10, 1863, P. L. 24 . . .	12
April 4, 1866, P. L. 96 . . .	12
March 25, 1929, P. L. 66, Sec. 1, No. 75 . . .	13, 21
August 5, 1932, P. L. 45, Sec. 1, 53 P. S. 4613 . . .	13
Act of Congress of:	
February 18, 1867, 14 U. S. St. at L. c. 46, p. 396 . . .	13
October 9, 1940, 54 Stat. 1060, 4 U. S. C. A. 14 . . .	4, 6, 15
Constitution of Pennsylvania, Article 1, Section 9 . . .	23
Constitution of the United States:	
Article 1, Section 8, Clause 17 . . .	17
Fifth Amendment . . .	23
Cooley on Taxation, 4th Ed. Vol. 1, Sec. 125 . . .	19
Judicial Code, Section 237a and 237b, 43 Stat. 937, 28 U. S. C. A. 344a and 344b . . .	1, 9, 11
Ordinance of the City of Philadelphia of December 13, 1939:	
Section 2 . . .	14
Section 3 . . .	14
Section 9 . . .	14
Section 10 . . .	15
Public Act No. 819, Section 2, 54 Stat. 1060, 4 U. S. C. A. 14 . . .	4, 6, 15
Public Salary Act of 1939, 53 Stat. 574 . . .	21

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

---

No. 1094

---

WILLIAM G. BARNES,

vs.

*Petitioner,*

CITY OF PHILADELPHIA

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPERIOR COURT OF PENNSYLVANIA**

---

*To the Honorable the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

The petitioner, William G. Barnes, by his attorney, Thomas D. McBride, respectfully presents to this Court his petition and prays that a writ of certiorari issue under the authority of judicial Code sec. 237b, 43 Stat. 937, 28 U. S. C. A. 344b, to review the Judgment of the Superior Court of Pennsylvania as of No. 156, October Term, 1945, affirming a judgment of the Court of Common Pleas No. 2 of Philadelphia County, Pennsylvania, as of No. 993, December Term, 1944. The Judgment of the Superior

Court of Pennsylvania, which is an intermediate Court of Appeal, was entered on November 19, 1945. Petitioner duly invoked the discretionary jurisdiction of the Supreme Court of Pennsylvania, which is the highest Court of that State, by presenting his petition for allowance of an appeal on November 28, 1945. The Supreme Court of Pennsylvania refused to allow an appeal, without Opinion, on January 11, 1946. This petition is filed herein on the 10th day of April, 1946.

The Opinion of the Superior Court of Pennsylvania is printed in the Record, p. 133 *et seq.* It is reported in 158 Pa. Super. 179, 44 A. 2d 610.

### Statement of the Case

1. Your petitioner, William G. Barnes, is a resident of the State of New Jersey who has been for some years past an employe of the United States Government at the Navy Yard situate at League Island adjacent to the City of Philadelphia. In going to and from his work he does not pass through the city proper.

2. The City Council of the City of Philadelphia, on December 13, 1939, by Ordinance, imposed a tax on salaries, wages, commissions and other compensation for work done or services performed in that City. The entire Ordinance appears in the Appendix hereto, p. 26. The relevant provisions thereof are as follows:

Section 2, imposes an annual tax for general revenue purposes "on (a) salaries, wages, commissions and other compensation earned after January 1, 1940, by residents of Philadelphia; and on (b) salaries, wages, commissions and other compensation earned after January 1, 1940, by non-residents of Philadelphia for work done or services performed or rendered in Philadelphia; \* \* \*

Section 3, provides that "Each person whose earnings or profits are subject to the tax imposed by this ordinance shall, on or before March 15th of each year, make and file with the Receiver of Taxes a return on a form furnished by or obtainable from the Receiver of Taxes, setting forth the aggregate amount of salaries, wages, commissions and other compensation or net profits earned by him during the preceding year and subject to the said tax, together with such other pertinent information as the Receiver of Taxes may require; \* \* \*"

Section 9, provides that "Any person who shall fail, neglect or refuse to make any return required by this ordinance, or any taxpayer who shall fail, neglect or refuse to pay the tax, penalties and interest imposed by this ordinance, or any person who shall refuse to permit the Receiver of Taxes or any agent or employee appointed by him in writing to examine his books, records and papers, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of earnings or profits to avoid the payment of the whole or any part of the tax, shall be subject to a fine or penalty of one hundred (100) dollars and costs for each such offense, or to undergo imprisonment for not more than thirty days for the non-payment of such fine or penalty and costs within ten days from the imposition thereof.

Such fine or penalty shall be in addition to any other penalty imposed by any other section of this ordinance.

The failure of any employer or any taxpayer to receive or procure a return form shall not excuse him from making a return."

Section 10, provides that "This ordinance shall not apply to any person or property as to whom or which it is

beyond the legal power of Council to impose the tax or duties herein provided for."

3. After the passage of the Ordinance the City did not attempt to apply it to non-resident Federal employees performing services in Federal reservations, title to which is in the Federal Government, until the year 1941.

4. Public Act No. 819, sec. 2, 54 Stat. 1060, 4 U. S. C. A. 14, enacted by the Congress of the United States on October 9, 1940, reads as follows:

"(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940."

5. Your petitioner failed to file a return with the Receiver of Taxes of the City of Philadelphia on or before March 15, 1943, for compensation received by him during the year 1942, as an employee of the United States Government at the Navy Yard situate at League Island. He likewise failed, on or before March 15, 1944, to file a similar report for the year 1943. The City of Philadelphia then brought an action of assumpsit in the Court of Common Pleas No. 2 of Philadelphia County, as of December Term, 1944, No. 993, against your petitioner. The City did not sue for the taxes alleged to be due but for the fine of \$100.00 for each year for



failure to file a return as provided in Section 9 of the Ordinance. That was the issue submitted to the jury (R. 116a-117a).

6. The case was tried to a court and jury which returned a verdict for the City for the total penal sum of \$200.00. Petitioner duly filed a motion for new trial and for judgment *non obstante veredicto* which were dismissed by the court of Common Pleas in an Opinion by the Trial Judge (R. 133a-137a). Judgment against petitioner was entered on the verdict.

7. An appeal from the said judgment was duly taken to the Superior Court of Pennsylvania. In that Court petitioner contended that the Ordinance was invalid as applied to him as a resident of New Jersey, on the grounds:

(a) that it constituted a taking of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States (Thirteenth Assignment of Error, R. p. 144);

(b) that it abridges the privileges and immunities of the petitioner as a citizen of the United States, in violation of the Fourteenth Amendment of the Constitution of the United States (Fourteenth Assignment of Error, R. p. 144);

(c) that Section 2 of the Act of Congress of October 9, 1940, 54 Stat. 1059, 4 U. S. C. A. 14, as interpreted by the Supreme Court of Pennsylvania and as applied by the Superior Court of Pennsylvania to petitioner, deprives him of due process of law in violation of the Fifth Amendment to the Constitution of the United States (Fifteenth Assignment of Error, R. p. 145);

(d) that it abridges the privileges and immunities of appellant as a citizen of the United States in violation of

the Fifth Amendment to the Constitution of the United States (Eighteenth Assignment of Error, R. p. 145);

(e) the penal provision of the Ordinance is invalid because it is beyond the police power of the City in that League Island Navy Yard is within the exclusive control, for penal purposes, of the Federal Government.

In the trial court there were eight cases tried together. In the printed record sent to this Court all writs, motions, rules, pleadings, testimony and opinions applied equally to each of the eight appeals although petitioner alone is proceeding in this Court. That explains why some of the papers use the name of one of the other litigants rather than printing eight separate sets of papers.

Although in the seven companion cases certain objections to trial rulings were sustained by the Superior Court of Pennsylvania, your petitioner specifically withdrew all such objections so that his case could be presented ultimately to this Court.

8. The Superior Court of Pennsylvania on November 19, 1945, affirmed the judgment of the Court of Common Pleas. The Opinion of that Court is printed in the Record, p. 133 et seq. As noted above, the Supreme Court of Pennsylvania, having a discretionary right of review, refused an appeal.

### **Questions Presented**

9. Whether the Ordinance of the City of Philadelphia can be applied constitutionally to petitioner, a non-resident of the City of Philadelphia or of the State of Pennsylvania, who works in the League Island Navy Yard, over which the United States Government has exclusive jurisdiction.

10. Whether Section 2 of the Act of Congress of October 9, 1940, c. 787, 54 Stat. 1060, 4 U. S. C. A. 14, authorizes the

City of Philadelphia to tax petitioner on the basis of income derived by him for work performed at the League Island Navy Yard which is under the exclusive jurisdiction of the United States Government, petitioner not being a resident of the City of Philadelphia or of the State of Pennsylvania.

11. Whether, in view of the exclusive jurisdiction of the United States over League Island Navy Yard, the City of Philadelphia has such police power as will warrant the creation and punishment of penal offenses committed therein.

### **Reasons Relied Upon for Allowance of Writ**

12. In the Superior Court of Pennsylvania petitioner questioned the validity of a statute of the State of Pennsylvania, to wit, the Ordinance of the City of Philadelphia, on the ground that, as applied to him, it is repugnant to the Constitution of the United States. The decision of the said Superior Court of Pennsylvania was in favor of the validity of such statute, thus entitling petitioner to invoke the obligatory jurisdiction of this Court by Appeal. Petitioner has sought review by certiorari owing to indecision as to whether an Appeal should be applied for in the first instance to the Chief Justice of the Supreme Court of Pennsylvania or the President Judge of the Superior Court of Pennsylvania. Petitioner respectfully submits, however, the present petition should be granted because substantively his right to review seems clear.

13. The decision of the Superior Court of Pennsylvania is based upon the decision of the Supreme Court of Pennsylvania in *Kiker v. City of Philadelphia*, 346 Pa. 624, 31 A. 2d 289, which was a Bill in Equity to restrain the enforcement of the presently questioned Ordinance. In the *Kiker* case the Chief Justice and an Associate Justice dis-

sented. This Court, in line with its policy as to Federal non-interference with future State enforcement of taxing statutes, refused certiorari. *Kiker v. City of Philadelphia*, 320 U. S. 741, 88 L. ed. 439. The decision of the Supreme Court of Pennsylvania, as that Court states in its Opinion, was a case of first impression and involved an interpretation of the controlling Act of Congress. The Opinion of that Court is, in your petitioner's submission, an erroneous decision of the meaning of that Act and thus raises an important question of Federal law which has not been but should be settled by this Court.

14. Petitioner's case is a test case to establish the rights of thousands of residents of New Jersey who work at League Island Navy Yard, many of whom have resisted payment of this tax on the ground that it violates their constitutional rights. Hundreds of others, after much resistance, are now paying the tax, under protest, under a refund agreement with the City of Philadelphia should this tax be ultimately held to be invalid as to New Jersey residents by this Court. Thus, the question is of great public importance and a decision by this Court would quiet much unrest, which on one occasion, even during the war, resulted in a deplorable work stoppage at the Navy Yard.

15. Petitioner specially set up his right not to be deprived of his property under the due process clause of the Fourteenth Amendment of the United States Constitution and in petitioner's submission, the decision of the Superior Court of Pennsylvania constitutes a denial of that right.

16. Petitioner specially set up and claimed that to compel him, a resident of the State of New Jersey, to pay this tax to the City of Philadelphia, when, in fact, he received no reciprocal benefits whatever from said City, constituted a denial to him of his privileges and immunities under the

Fourteenth Amendment to the Constitution of the United States and in petitioner's submission, the Opinion of the Superior Court of Pennsylvania improperly denied such claim.

17. The attempted extension of the penal jurisdiction of the City of Philadelphia to a Federal reservation is a serious question involving the interrelation of State and Federal Governments. If this extension is valid and if it is to secure general public and peaceful acceptance by the citizens of New Jersey, it should rest only on a decision of this Court. The Superior Court of Pennsylvania agreed that the fine imposed by Section 9 of the Ordinance was not civil but criminal even though collected by civil procedure. Nevertheless, it sustained the jurisdiction on the basis of the decision of the Supreme Court of Pennsylvania in the *Kiker* case, *supra*, although that specific question had not been directly decided in that case.

WHEREFORE your petitioner respectfully prays that a writ of certiorari under Judicial Code sec. 237b, 28 U. S. C. A. 344b be issued out of and under the seal of this Honorable Court directed to the Superior Court of Pennsylvania to certify and send to this Court for its review and determination on a day certain to be therein named a full and complete transcript of the record and all proceedings in the cause entitled and numbered on its docket City of Philadelphia vs. William G. Barnes, No. 156, October Term, 1945, including the record transmitted to it on appeal from the Court of Common Pleas No. 2 of Philadelphia County as of No. 993, December Term, 1944, and also the docket entries of the Superior Court showing the petition for allowance of appeal filed in the Supreme Court of Pennsylvania and its denial on January 11, 1946; that the said judgment of the said Superior Court of Pennsylvania may be reversed

and set aside by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

WILLIAM G. BARNES,  
By THOMAS D. McBRIDE,  
*Counsel for Petitioner.*

